IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No. 1615 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJUBEN NARESHKUMAR VALODARA

Versus

NARESHKUMAR PRABHUDAS VALODARA

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Appearance :

MR HRIDAY BUCH for Applicant

Opponent NO.1 served

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 21/10/2005

ORAL JUDGMENT

1 Heard learned Advocate Mr.Hriday Buch for applicant. Opponent is served.

2 This application is preferred by the applicant

wife against her husband – opponent for transfer of Hindu Marriage Petition No. 410 of 2005 filed by the present opponent against the applicant for restitution of conjugal rights, from Ahmedabad Family Court to the District of Junagadh.

3 The marriage between the parties solemnized on 16th of February, 2003 as per Hindu rites. After marriage, the applicant stayed with her husband at Rangpur. After some time, according to allegation made by the applicant, she was ill-treated by her husband and in-laws and thereafter she was driven out of the matrimonial house and after great difficulties she reached to Junagadh and resumed her parental home.

4 The present applicant preferred the Misc. Civil Application No. 165 of 2005 in the court of Chief Judicial Magistrate at Junagadh under Section 125 of the Code of Criminal Procedure for her maintenance. On serving of process in the said Criminal Misc. Application, the present opponent appeared and

tendered his reply on 21st of April, 2005. It appears that thereafter around 26th of April, 2005, the opponent preferred a Hindu Marriage Petition No. 410 of 2005 in the Family Court at Ahmedabad for restitution of conjugal rights against the present applicant.

5 It is the case of the applicant that she was driven out of the matrimonial house and thereafter the opponent did not care to take her back at matrimonial home. Her parents are of poor financial condition and she has no source of income and is completely dependent on her father. Her application for maintenance is still to be decided by the competent court. It is submitted that she will have to incur the expenses of Rs. 300/- on each trip from Junagadh to Ahmedabad to attend the said Hindu Marriage Petition pending before the Family Court at Ahmedabad. It would be totally impossible, therefore, for her to spend this much amount on each trip to defend the said Hindu Marriage Petition in the above mentioned financial circumstances of the applicant.

Moreover, the applicant is aged about 20 years, it would be further difficult for her to travel all alone to and fro. It is further submitted that as against that, the opponent husband is serving in a press and earns Rs. 7,000/- per month. The father of the opponent earns Rs. 10,000/- per month and having properties at Ahmedabad. The opponent attends Junagadh Court in the said Criminal Misc. Application filed by the applicant. It is, therefore, submitted that in the above mentioned circumstances, having regard to the convenience of the wife, the said Hindu Marriage Petition pending before the Family Court at Ahmedabad be transferred to the Court at Junagadh.

6 Having heard learned Advocate for the applicant and having gone through the records, it clearly appears after examining the balance of convenience that it would be very difficult for the wife to attend the Court at Ahmedabad from Junagadh on each date. She is without source of income at present and it would be further difficult for her to travel all alone from Junagadh to Ahmedabad. As against that,

the opponent is earning, as stated by the applicant, to the tune of Rs. 7,000/- per month, it would not be difficult for the opponent husband to attend the court at Junagadh and more so when the opponent attends the Criminal Misc. Application filed by the applicant in the Criminal Court at Junagadh. Taking the overall view of the matter and since the grounds urged for the transfer are not controverted by the opponent, it would be in the interest of justice, if the transfer of the said Hindu Marriage Petition is directed, as sought for.

7 In the result, this Application is allowed and it is directed that the Hindu Marriage Petition No. 410 of 2005 filed by the opponent against the applicant pending before the Family Court at Ahmedabad stands transferred to the District of Junagadh. Concerned Family Court at Ahmedabad is directed to transmit the Record and Proceedings of the said Hindu Marriage Petition No. 410 of 2005 to the District Judge at Junagadh. On so receiving the Record and Proceedings, the District Judge, Junagadh,

shall allot the said Hindu Marriage Petition to the competent court of having jurisdiction at Junagadh for disposal of the said the Hindu Marriage Petition according to law. Rule made absolute.

(J.R.VORA, J.)

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